

SEWARD & KISSEL LLP

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004

TELEPHONE: (212) 574-1200
FACSIMILE: (212) 480-8421
WWW.SEWKIS.COM

WRITER'S DIRECT DIAL:

(212) 574-1448

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/6/2016

901 K STREET, NW
WASHINGTON, DC 20001
TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184

MEMO ENDORSED

March 25, 2016

VIA ECF

Honorable Valerie E. Caproni
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: O.W. Bunker-Related Interpleader Actions (See Schedule 1)

Dear Judge Caproni:

The Court's March 4, 2016 order (*e.g.*, Dkt. #155 in 14-cv-9282) requested that the parties confer and file a joint submission that proposed (i) "two, or if necessary three, cases that shall proceed to summary judgment," and that the selected cases "shall, to the extent possible, represent the 'best case' for the fuel suppliers and the 'best case' for ING and the O.W. Bunker entities in light of all the claims and defenses at issue in each of the respective cases[.]" (ii) two test cases for briefing the Vessel Interests' proposed discharge motions, and (iii) briefing deadlines for the anticipated summary judgment and discharge motions in such cases. Dkt. #155 at ¶ 3.¹ The parties have conferred and report as follows:

I. Proposals

A. Proposals for Summary Judgment Motions

With respect to the two (or if necessary, three) test cases to proceed to summary judgment:

1. The Fuel Suppliers propose *Clearlake Shipping Pte Ltd. v. O.W. Bunker (Switzerland) SA, et al.*, No. 14-cv-9287, and *Hapag-Lloyd AG v. U.S. Oil Trading LLC*, No. 14-cv-

¹ ING Bank N.V. as Security Agent ("ING Bank"), the O.W. Bunker USA Inc. Liquidating Trust ("O.W. USA") and O.W. Bunker Germany GmbH ("O.W. Germany") do not take a position on whether or to what extent these matters "represent the 'best case' for the fuel suppliers and the 'best case' for ING and the O.W. Bunker entities in light of all the claims and defenses at issue in each of the respective cases."

Hon. Valerie E. Caproni
March 25, 2016
Page 2

9949 (and related action *U.S. Oil Trading LLC v. M/V Vienna Express*, No. 15-cv-6718).

2. ING Bank N.V. proposes *Clearlake Shipping Pte Ltd. v. O.W. Bunker (Switzerland) SA, et al.*, No. 14-cv-9287, *SK Shipping Co., Ltd. v. NuStar Energy Services, Inc., et al.*, No. 15-cv-2141, and *SHV Gas Supply & Risk Management SAS v. O.W. Bunker USA Inc.*, No. 14-cv-9720.
3. O.W. USA proposes *SHV Gas Supply & Risk Management SAS v. O.W. Bunker USA Inc.*, No. 14-cv-9720.
4. O.W. Germany proposes *Hapag-Lloyd AG v. U.S. Oil Trading LLC*, No. 14-cv-9949 (and related action *U.S. Oil Trading LLC v. M/V Vienna Express*, No. 15-cv-6718).
5. The Vessel Interests propose *Clearlake Shipping Pte Ltd. v. O.W. Bunker (Switzerland) SA, et al.*, No. 14-cv-9287, and *Nippon Kaisha Line Limited v. O.W. Bunker USA Inc., et al.*, No. 14-cv-10091.²

B. Proposals for Discharge Motions

The parties respectively propose the following actions:

1. The Vessel Interests propose *Clearlake Shipping Pte Ltd. v. O.W. Bunker (Switzerland) SA, et al.*, No. 14-cv-9287, and *Nippon Kaisha Line Limited v. O.W. Bunker USA Inc., et al.*, No. 14-cv-10091.
2. The Fuel Suppliers propose *Hapag-Lloyd AG v. U.S. Oil Trading LLC*, No. 14-cv-9949.
3. ING Bank proposes *Clearlake Shipping Pte Ltd. v. O.W. Bunker (Switzerland) SA, et al.*, No. 14-cv-9287, and *SK Shipping Co., Ltd. v. NuStar Energy Services, Inc., et al.*, No. 15-cv-2141.
4. O.W. Germany proposes *Hapag-Lloyd AG v. U.S. Oil Trading LLC*, No. 14-cv-9949.

C. Briefing Schedules

With respect to the briefing schedule for summary judgment motions, the parties (to the extent they have stated a position) state as follows:

² ING Bank understands the “Vessel Interests” to include counsel for all interpleader plaintiffs in the Non-Stayed Actions filed prior to October 1, 2015, and counsel for the “Fuel Suppliers” to include counsel for NuStar, OMS, Chevron, USOT and the Chemoil Parties.

Hon. Valerie E. Caproni
March 25, 2016
Page 3

1. The Fuel Suppliers propose that their initial motions should be filed within 30 days of the Court's order selecting the cases to be briefed, with responses / cross-motions to be filed within 30 days of the Fuel Suppliers' motions, and reply briefs to be filed within 14 days thereafter.
2. ING Bank and O.W. USA propose Fuel Suppliers' initial motions should be filed June 3, 2016, with opposition briefs to be filed July 15, 2016, and reply briefs to be filed August 12, 2016.
3. O.W. Germany proposes that a joint statement of agreed facts be prepared by May 25, 2016, with Fuel Suppliers' opening briefs to be filed June 3, 2016, opposition briefs to be filed July 15, 2016, and reply briefs to be filed August 12, 2016.

With respect to the briefing schedule for discharge motions, the parties (to the extent they have stated a position) state as follows:

1. The Vessel Interests propose that initial motions should be filed May 25, 2016, with opposition briefs to be filed June 22, 2016 and replies to be filed July 27, 2016.
2. ING Bank, O.W. Germany and O.W. USA propose that initial motions should be filed June 24, 2016, with opposition briefs to be filed July 29, 2016 and replies to be filed August 19, 2016.
3. The Fuel Suppliers propose that the Vessel Interests' discharge motions be filed on or before May 25, 2016, with responses due on or before June 29, 2016, and replies due on or before July 29, 2016.

* * *

This letter has been submitted without prejudice to or waiver of the objections of various parties as to the proposed test cases, each of whom reserve the right to submit brief supplemental letters to the Court in support of their respective positions in order to aid in the selection process. The parties to these related actions specifically reserve all rights, claims and defenses, without limitation. Thank you.

The following actions shall be "test cases" for the purpose of briefing summary judgment and discharge motions in the related interpleader actions currently pending before the Undersigned: 14-cv-9287, 14-cv-9949 and 15-cv-6718; and 14-cv-10091.

The briefing schedule for both summary judgment and discharge motions in the test cases shall be as follows: Motions shall be due May 6, 2016, Opposition briefs shall be due June 3, 2016 and Reply briefs shall be due July 1, 2016.

Respectfully submitted,


Brian P. Maloney
SO ORDERED.



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Date: 4/6/2016

Schedule 1

O.W. Bunker-Related Interpleader Matters
(Non-Stayed Actions Filed Before October 1, 2015)

1. *Birch Shipping Ltd. v. O.W. Bunker China Ltd. (HK), et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9282 (VEC)
2. *Clearlake Shipping Pte Ltd v. O.W. Bunker (Switzerland) SA, et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9287 (VEC)
3. *Bonny Gas Transport Limited v. O.W. Bunker Germany GmbH, et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9542 (VEC)
4. *SHV Gas Supply & Risk Management SAS v. O.W. Bunker USA Inc., et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9720 (VEC)
5. *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC, et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9949 (VEC)
6. *OSG Ship Management, Inc. v. O.W. Bunker USA Inc., et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 9973 (VEC)
7. *Hapag-Lloyd Aktiengesellschaft v. O'Rourke Marine Service L.P., et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 10027 (VEC)
8. *NYK Bulk & Project Carriers Ltd v. O.W. Bunker USA Inc., et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 10090 (VEC)
9. *Nippon Kaisha Line Limited v. O.W. Bunker USA Inc., et al.*
U.S.D.C., S.D.N.Y., Case No. 14 Civ. 10091 (VEC)
10. *Canpotex Shipping Services Limited v. O.W. Bunkers (UK) Limited, et al.*
U.S.D.C., S.D.N.Y., Case No. 15 Civ. 1351 (VEC)
11. *SK Shipping Co., Ltd. v. NuStar Energy Services, Inc., et al.*
U.S.D.C., S.D.N.Y., Case No. 15 Civ. 2141 (VEC)
12. *U.S. Oil Trading L.L.C. v. M/V VIENNA EXPRESS, et al.*
U.S.D.C., S.D.N.Y., Case No. 15 Civ. 6718 (VEC)